U.S. Department of Labor

Office of Administrative Law Judges
603 Pilot House Drive - Suite 300
Newport News, VA 23606-1904

(757) 873-3099
(757) 873-3634 (FAX)

Issue date: 27Feb2002

Case No: 2001-LHC-1389

OWCP No: 5-110631

In the Matter of:

LARRY REYNOLDS,
Claimant,

v.

NEWPORT NEWS SHIPBUILDING
AND DRY DOCK COMPANY,
Employer.

Appearances:

Gregory Camden, Esq.
For Claimant

Benjamin Mason, Esq.
For Employer

Before: FLETCHER E. CAMPBELL, JR.
Administrative Law Judge

DECISION AND ORDER

This proceeding arises from a claim filed by Larry Reynolds ("Claimant") for benefits under the Longshore and Harbor Workers' Compensation Act ("the act") as amended, 33 U.S.C. 901 et seq. Claimant seeks temporary total disability compensation for about a month-long period as a result of his bilateral carpal-tunnel syndrome, which, he alleges, is work related. Newport News Shipbuilding and Dry Dock Co. ("Employer" or "the shipyard") defends on the grounds that Claimant could not have developed carpal-tunnel syndrome from the work he performed at the shipyard because none of his assigned tasks involved the sort of repetitive acts that cause carpal-tunnel syndrome.

A formal hearing was held in this case before me at Newport News, Virginia on November 28, 2001, at which both parties were afforded a full opportunity to present evidence and argument as provided for by law and regulations. The findings and conclusions that follow are based on a complete review of the entire record in light of the arguments of the parties, applicable statutory provisions, regulations, and pertinent precedent.

STIPULATIONS

The parties have stipulated to and I find the following:

1. That an employer/employee relationship existed at all relevant times.

2. That the parties are subject to the jurisdiction of the act.

3. That Claimant alleges that he is suffering from carpal-tunnel syndrome as a result of his employment with a date of diagnosis of 6/19/1995.

4. That Claimant gave timely notice of injury to Employer.

5. That Claimant filed a timely claim for compensation.

6. That Employer filed a timely first report of injury with the Department of Labor and a timely notice of controversion.

7. That Claimant's average weekly wage at the time of diagnosis was $1,259.84, resulting in a compensation rate of $839.89, but the maximum compensation rate at the time of his diagnosis was $760.92.

8. That Employer has not paid Claimant any benefits as a result of this injury.

9. That, if the administrative law judge finds that Claimant's carpal-tunnel syndrome was related to his employment with Employer during his services, Claimant would be entitled to temporary total disability benefits from 12/30/2000 to 1/30/2001.

10. That, if the administrative law judge awards Claimant temporary total disability benefits, Employer is entitled to a credit for benefits paid to Claimant under Employer's sickness and accident plan.

(JX 1).[1]

ISSUES

Is Claimant's carpal-tunnel syndrome work related?

SUMMARY OF EVIDENCE

A. Testimony of Larry Reynolds

Larry Reynolds has been employed at the shipyard since July of 1990 (Tr. 12). He is currently a security guard who is required to walk and hit the clock line (Tr. 12-13). He used to be required to climb on board ships and submarines. He was also assigned to ship patrol, and would check the fire equipment on a daily basis (Id.). On any given ship there would be at least seven decks. A security guard is required to climb ladders to get from one deck to another (Id.). Mr. Reynolds would climb more than one hundred vertical ladders seven-to-ten feet in height in one day (Tr. 14).

Claimant became quite familiar with CO2 tanks, which are fire extinguishers used on ships. As a security guard, his primary responsibility is checking fire equipment and the dates on them to make sure everything is in its proper place (Tr. 15). If, for instance, a seal is broken or a CO2 tank is not in the proper place, Claimant is responsible for replacing it. If there is a tank out of place, he makes sure that it is replaced and in the proper location. If a seal is broken, he takes the tank off the ship and replaces it with a new one (Tr. 15).

In the course of a day, Mr. Reynolds would check more than 50 to 60 CO2 tanks (Tr. 15). How many CO2 tanks he checks depended primarily on the type of ship and how many tanks he had to replace (Tr. 16). Typically, Claimant found seven or eight misplaced CO2 tanks during the day (Id.). The CO2s weighed 45-50 pounds (Tr. 29). Sometimes he found himself taking two at a time (Id.).

Claimant also spent a great deal of his time turning keys. He turned keys on a carrier through the clock line. A clock line consists of certain areas that a security guard is patrolling.

---

[1] The following are references to the record:
CX - Claimant's exhibit
EX - Employer's exhibit
JX - Joint exhibit
Tr. - Transcript of hearing

When the security guard gets to a particular area, there is a clock; the security guard then turns the key, and it indents on a piece of paper so that the shipyard knows which security guards actually walked their patrols (Tr. 16-17). Claimant would turn 25-30 keys on an assigned work day (Tr. 17).

In 1995, Claimant was laid off for a short period but returned to work as a security guard in 1996. However, when he returned to work, because of numbness in his hands, he was unable to qualify with the .38 revolver; so his job position changed a bit (Tr. 17-18).

Since 1996, Claimant has been working at the gates on the clock line, which gives him problems because he is constantly turning keys throughout the day (Tr. 21).

Mr. Reynolds first went to the clinic due to pain in his hand in 1995. The clinic sent him to see Dr. Ronald Freund (Tr. 21). At the time, Mr. Reynolds was having a throbbing sensation in his hand and shoulders (Id.). He was also having a numbness in his left hand. He saw Dr. Freund only once or twice. Dr. Freund restricted him from climbing ladders (Tr. 22).

Between 1995 and 2000, Mr. Reynolds was not treated by any physician for his hands. Dr. Freund advised him that his problem would never resolve. Claimant was apprehensive about surgery (Tr. 23). However, his pain continued to get worse and worse. One day in 2000, Claimant was hitting the keys at work, and he could not do it any more (Tr. 24). His hand hurt really badly. Claimant then saw Dr. Bruce Reid, who diagnosed carpal-tunnel syndrome and performed surgery on Claimant's right hand in 2000. Afterwards, Claimant was unable to work for approximately four and a half weeks. He has returned to work but continues to have problems with his right hand. However, the surgery did relieve some of the pressure that Mr. Reynolds had been experiencing (Tr. 24).

Mr. Reynolds testified that he usually finds about seven misplaced fire extinguishers a day (Tr. 30).

Although he writes with his left hand, he uses his right hand for almost everything (Tr. 36). He shoots right handed, eats right handed, and performs his job duties on the clock line with his right hand (Tr. 36).

While working from July of 1996 until he went to the clinic in 1996, Claimant did complain about his problems to his co-workers (Tr. 43). No one ever sent him to the clinic for his problems (Tr. 44). In addition, the company knew of the problems that Claimant had on the firing range (Id.). At one point, because of the pain, Claimant could not "hit the keys," and he was written up by his supervisor for not doing his job (Tr. 43).

In 2000, Claimant was working in Building 600 when his hand began to throb and

become numb. He called his supervisor, and at first everyone thought he was having a heart attack, but Claimant knew what was wrong with him (Tr. 45-6).

Claimant testified that, although he was laid off between July of 1995 and July of 1996, he did not do anything repetitive to his hands during his lay-off period (Tr. 55). His hands did not get any better, and the pain was always present (Tr. 55). However, upon his return to work at the shipyard, his pain got gradually worse from July of 1996 until 2000, when he saw Dr. Reid (Tr. 56).

B. Employer's clinic records

In 1995, Mr. Reynolds reported to the clinic with complaints of pain in his hands and was referred by the clinic to Dr. Freund (CX 7-5). In 1995, Mr Reynolds reported to the clinic that his replacing of CO2s aboard ships, lifting, gripping, and carrying heavy equipment caused bilateral carpal-tunnel syndrome (CX 8). The clinic completed a report of occupational injury (CX 8).

C. Dr. Tornberg's Opinion

On December 18, 2000, Dr. Tornberg, an in-house shipyard physician, was asked to opine about whether Claimant's condition is causally related to his work. Noting that a complete set of records from Dr. Reid was not available, Dr. Tornberg opined that Claimant's condition is an "ordinary disease of life" (CX 9-1).

D. Deposition Testimony of Dr. Ronald K. Freund

On deposition, Dr. Freund testified that gripping and climbing ladders could cause and/or aggravate problems related to carpal-tunnel syndrome (CX 15-8). Dr. Freund did not find any other history which could account for Claimant's carpal-tunnel syndrome (CX 15-8).

Dr. Freund was not completely comfortable with a diagnosis of carpal-tunnel syndrome (CX 15-10). However, one part of Mr. Reynolds' exam, the sensory portion, was consistent with bilateral carpal-tunnel syndrome (Id.).

Dr. Freund opined that, even if an individual stops repetitive use of hands, the symptoms may persist or get worse (CX 15-17). Some people have a chronic problem with the synovium, and it will go from a thin membrane to something that actually looks like chicken skin.

If someone were to climb a ladder, get up to the second deck, have his hands down

by his side, and then walk around for about five minutes, that is considered continuous activity (CX 15X-20).

E. Medical Records of Dr. Bruce Reid

A shipyard physician referred Mr. Reynolds to Dr. Bruce Reid for evaluation of his bilateral wrist and hand discomfort (CX 11-6). Dr. Reid's notes indicate that Claimant had had problems since 1995, when he was referred to a hand specialist by the shipyard (CX 11-6). Dr. Reid noted that Claimant had difficulty qualifying with a firearm due to

discomfort in his right and left upper extremities and numbness, tingling, and overall weakness (CX 11-6). Dr. Reid opined that it is possible that Mr. Reynolds' job could have aggravated or contributed to his carpal-tunnel syndrome, whether it was pre-existing or not (CX 16-1).

DISCUSSION

The only question at issue is whether Claimant's carpal-tunnel syndrome and resulting disability are work related under the act. Although the burden of demonstrating causation is on Claimant, he may be aided by a presumption in section 20(a) of the act, which provides that, "in any proceeding of enforcement of a claim for compensation under this act, it shall be presumed, in the absence of substantial evidence to the contrary - (a) that the claim comes within the provisions of the act...." In order to obtain the benefit of the presumption, Claimant must establish that he suffered some harm or pain and that an accident occurred or working conditions existed which could have caused the harm or pain. Kelaita v. Triple A Machine Shop, 13 BRBS 326 (1981).

There is ample evidence that Claimant suffers from bilateral carpal-tunnel syndrome (CX 8 (Dr. J. W. Reid)). In addition, Dr. Freund testified that gripping and climbing ladders, which Claimant had to do as part of his job, could cause or aggravate problems related to carpal-tunnel syndrome (CX 15-8). Likewise, Claimant's other physician, Dr. Bruce Reid, stated that it is possible that Mr. Reynolds' job could have aggravated or contributed to his carpal-tunnel syndrome, whether it was pre-existing or not (CX 16-1). Finally, Claimant testified without contradiction that he engaged in some repetitive activities such as climbing ladders (Tr. 13), lifting fire extinguishers (Tr. 15), and turning keys (Tr. 16).

For these reasons, I find that Claimant has made a prima facie case that he suffered a harm resulting in a disability and that conditions existed at work which could have caused or aggravated that harm. Therefore, I find that he has successfully invoked the section 20(a)

presumption.

Because the presumption has been invoked in this case, the burden shifts to Employer to adduce substantial rebuttal evidence severing the connection between Claimant's carpal-tunnel syndrome and his job. Swinton v. J. Frank Kelly, Inc., 554 F. 2d 1075, 1082 (D.C. Cir.), cert. denied 425 US 870 (1976). In rebuttal, Employer offers the opinion of its in-house medical director, Dr. David M. Tornberg, who interviewed Claimant once and reviewed Claimant's work history and the shipyard clinic notes about him. He stated as follows:

> "Based on my interview of Mr. Reynolds and my review of his documented work history and clinic notes, I find that there is no occupationally related repetitive trauma, stress or injury that could account for the causation of his carpal tunnel syndrome involving his right and left hands. He is left-handed dominant and as noted, the condition is present bilaterally. He is not involved in any repetitive manual tasks, use of powered equipment, vibrating tools or working in one fixed position with the hand-wrist unit. I must therefore conclude that his condition represents ordinary disease of life."

(CX 10)

The question is whether this constitutes a "specific and comprehensive" rebuttal so as to qualify as "substantial" within the meaning of section 20(a). Gencarelle v. General Dynamics Corp., 22 BRBS 170, 175 (1989). The fact that Dr. Tornberg's opinion was not based on a complete medical history (CX 10) and the fact that Dr. Tornberg's reasoning was incomplete in that he did not state what the standards for diagnosing work-related carpal-tunnel syndrome are do not necessarily render his opinion nonspecific or non-comprehensive. However, Dr. Tornberg did not specifically address the contention that Claimant's job activities could have aggravated or otherwise contributed to his carpal- tunnel syndrome. Where aggravation or other contribution to a pre-existing condition is alleged, an employer must establish that the claimant's condition was not aggravated by his employment. Cairns v. Matson Terminals, 21 BRBS 252 (1988). This is particularly important in a case in which the claimant was, by Dr. Tornberg's admission, placed on restrictions against climbing ladders (CX 10). If climbing ladders played no role in the causation or aggravation of Claimant's hand pain, why would he need restrictions against performing that activity? An activity that causes or triggers disabling pain must be an aggravating activity. Although Claimant did not climb ladders after 1995, the fact that he did once climb more that 100 ladders a day as part of his shipyard job and the fact that it did cause him pain (CX 13(e); Tr. 14) constitute very strong evidence indeed that it at least aggravated his condition within the meaning of case law. Because it failed to specifically address this issue, Dr. Tornberg's opinion is not "specific and comprehensive."

There is no other rebuttal evidence that could qualify as specific and comprehensive. Therefore, I find that Employer has not specifically rebutted Drs. Reid and Freund's statements concerning the possibility of aggravation. By operation of section 20(a), Claimant is deemed to have proven causation, the only issue presented. As a result, I find that Claimant is entitled to the compensation that he seeks.

ORDER

It is hereby ORDERED that:

1. Employer shall pay Claimant temporary total disability compensation for the period December 30, 2000 through January 30, 2001 at a rate of $760.92 per week.

2. Employer shall receive credit for any benefits previously paid to Claimant.

3. Employer shall continue to furnish such reasonable, appropriate and necessary medical care for Claimant's work-related injury pursuant to section 7 of the act.

4. Interest at the treasury-bill rate specified in 28 U.S.C. 1961 in effect when this decision and order is filed with the Office of the District Director shall be paid on all accrued benefits computed from the date on which each payment was originally due to be paid. See Grant v. Portland Stevedoring Co., 16 BRBS 267 (1984).

5. Within thirty (30) days of receipt of this decision and order, Claimant's attorney shall file a fully supported and fully itemized fee petition, serving a copy thereof on Employer's counsel, who shall then have ten (10) days to respond thereto.

A

FLETCHER E. CAMPBELL, JR.
Administrative Law Judge

FEC/lpr
Newport News, Virginia